IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.6848, 6850, 6854, 6858, 6863 & 6865 of 2022
and
W.M.P.Nos.6910, 6911 & 6913 of 2022

Hemalatha Constructions,
Represented by its Partner
Mr.G.Karthikeyan ...Petitioner in all W.P's

-Vs-

The Assistant Commissioner (CT) (FAC),
Saligramam Assessment Circle,
No.15 & 16, 1st Floor, 100 Feet Road,
Malligai Avenue, Kolathur,
Chennai-600099. ...Respondent in all W.P's

Prayer in W.P.No.6848 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent herein in TIN/33101390774/2013-14 dated 15.09.2021 to quash the same.

Prayer in W.P.Nos.6850 & 6854 of 2022 : Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent herein in TIN/33101390774/2014-15 and TIN/33101390774/2015-16 dated 21.09.2021 respectively to quash the same.

Prayer in W.P.No.6858 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent herein in TIN/33101390774/2013-14 dated 25.01.2022 to quash the same direct the respondent to re consider our application dated 18.10.2021 a fresh filed under Section 84 of the TNVAT Act, 2006 read with Section 9(2) of the CST Act 1956.

Prayer in W.P.No.6863 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent herein in TIN/33101390774/2013-14 dated 25.01.2022 to quash the same direct the respondent to re consider our application dated 18.10.2021 a fresh filed under Section 84 of the TNVAT Act, 2006 read with Section 9(2) of the CST Act, 1956.

Prayer in W.P.No.6865 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent herein in TIN/33101390774/2015-16 dated 25.01.2022 to quash the same.

In all W.P's

For Petitioner : Mr.R.Kumar

For Respondent : Mr.V.Prasanth Kiran,
Government Advocate

COMMON O R D E R

The prayer sought for herein in these writ petitions is for a Writ of Certiorari calling for the records of the respondent herein in TIN/33101390774/2013-14, 2014-15, 2013-14, 2013-14, 2013-14 & 2015-16 dated 15.09.2021, 21.09.2021, 25.01.2022, 25.01.2022, 15.09.2021 & 25.01.2022 respectively and to quash the same.

2. The issue raised in all these writ petitions is one and the same. Hence, with the consent of the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent, all these writ petitions were taken up together and are disposed of by this common order.

3. The petitioner is a dealer under the erstwhile TNVAT Act, 2006 (In short 'the Act') and for the Assessment Years 2013-14, 2014-15 & 2015-16, there were orders of assessment dated 15.09.2021 and 21.09.2021 respectively. Subsequently, the petitioner, without challenging the said assessment orders, filed Rectification Applications under Section 84 of the Act and those applications also have been rejected by the Respondent Revenue on 25.01.2022. Thereafter, challenging both the assessment orders as well as the rejection of rectification orders under Section 84 of the Act for these three assessment years, all these Writ Petitions have been filed by the petitioner.

4. Learned counsel for the petitioner pointed out that, insofar as the assessment orders is concerned, though show cause notice was given, it could not be replied by the petitioner. Therefore, without giving any chance to the petitioner to reply since the assessment orders have been passed, as against which, rectification applications were filed on 18.10.2021 and the same

have also been rejected through the impugned orders dated 25.01.2022, where the Respondent Revenue has taken a stand that, the petitioner has not given option application to invoke Section 6 of the Act for levying the tax instead of Section 5 of the Act and therefore, the said reasons stated by the Revenue in rejecting the Section 84 applications by the order dated 25.01.2022 is against the principles of natural justice. On that ground, the petitioner has chosen to challenge all these orders by way of these Writ Petitions.

5. However, the learned Government Advocate appearing for the respondent contended that as against the orders of assessment, the petitioner should have filed an appeal, without which, the petitioner filed rectification applications, that also have been considered and rejected through the orders dated 25.01.2022 on merits. Therefore, against Section 84 rectification orders, if the petitioner is advised to challenge the same by revision, he can do so. However, insofar as the assessment orders, which are also impugned in these writ petitions, only appeals have to be filed. The learned Government Advocate further contended that, in order to avoid making payment of pre-deposit of the demand of tax, the petitioner has chosen to file these Writ Petitions, where absolutely there has been no reason to entertain these Writ Petitions because, notice has also been given prior to the passing of the assessment orders. Therefore, the question of violating the principles of natural justice does not arise in this case. Hence, these Writ Petitions are liable to be rejected.

6. I have considered the said rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent and have perused the materials placed before this Court.

7. Before passing the orders of assessment dated 15.09.2021 and 21.09.2021 respectively, notice has been given by the Revenue on 02.05.2017, which has been admittedly not responded by the petitioner.

8. Therefore, the orders of assessment were passed on 15.09.2021 and 21.09.2021 respectively, against which appeal remedy is available to the petitioner but he has not chosen to file an appeal for the reasons best known to him. However, he could file rectification applications on the ground that, he has filed option application opting to invoke Section 6 of the Act for lesser percentage of tax to be levied, however, the same was not considered and therefore it amounts to violation of principles of natural justice.

9. However, the facts remains that in the order dated 25.01.2022 under which Section 84 application filed by the petitioner was rejected, it has been clearly stated by the Respondent Revenue that the option petition having been considered was rejected for reasons stated therein.

10. Whether the said reason stated by the assessing authority is correct or not cannot be gone into by this Court at this juncture because the petitioner has got effective alternative remedy to challenge that order before the concerned authority either by way of appeal or by way of revision, as the case may be.

11. Therefore, on both counts ie., challenge made as against the assessment order dated 15.09.2021 and 21.09.2021 respectively as well as the challenge made against the rejection order under Section 84 of the Act dated 25.01.2022 of the Revenue is concerned, in both the cases there is no ground of violation of principles of natural justice and therefore these Writ Petitions are not entertainable. Accordingly, the submission made by the learned Government Advocate appearing for the Respondent Revenue in this regard is to be accepted.

12. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following order.

- That the impugned orders cannot be successfully challenged before this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. Therefore, these Writ Petitions, on the only ground on non-exhaustion of alternative appeal/revision remedy, are liable to be rejected and accordingly are dismissed.
- However, the dismissal of these writ petitions will not stand in the way of the petitioner dealer to approach the revisional authority/appellate authority to challenge the impugned orders herein in the manner known to law.”

13. With these observations, these Writ Petitions are dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

Anu/KST

To

The Assistant Commissioner (CT) (FAC),
Saligramam Assessment Circle,
No.15 & 16, 1st Floor, 100 Feet Road,
Malligai Avenue, Kolathur,
Chennai-600099.

+1cc to Mr.R.Kumar, Advocate SR. No. 20677
+1cc to Special Government Pleader (Taxes) SR. No.21475

W.P.Nos.6848, 6850, 6854, 6858, 6863 & 6865 of 2022
and
W.M.P.Nos.6910, 6911 & 6913 of 2022

SPD (CO)
PR (28/04/2022)